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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

In Re Bard IVC Filters Products
Liability Litigation

No. MD-15-02641-PHX-DGC

(Oral Argument Requested)

PLAINTIFF'S MOTION IN LIMINE
NO. 5: RETRIEVABLE FILTER
SALES VERSUS SNF FILTER SALES

(Assigned to the Honorable David G.
Campbell)

(Tinlin Bellwether Case)

Plaintiffs move *in limine* to preclude evidence and argument that Bard retrievable filters are more popular among doctors because sales increased over time while Simon Nitinol Filter (“SNF”) sales declined. Under Federal Rules of Evidence 402 and 403, this Court should exclude such evidence because it is irrelevant and to the extent it has any marginal relevance, its prejudicial effect substantially outweighs any probative value.

MEMORANDUM OF POINTS AND AUTHORITIES

I. Evidence at Issue

In the past three bellwether trials, Bard has argued that doctors prefer retrievable filters based on a chart purporting to show that sales for retrievable filters increased while sales for the SNF filter decreased during the years 2005-2016. Exhibit A, *Jones Trial Tr.*, May 30, 2018, 2155:21-2156:17; Exhibit B, *Tr. Exhibit 7900*. Bard further argued in closing that the Simon Nitinol is “is not a viable alternative” because “the chart we showed you . .

1 . showing the sales over the last 13 years” shows “that doctors in this country . . . do not
2 want to implant permanent filters. . . . In today's medical world, an old permanent filter like
3 the Simon Nitinol filter is not a viable alternative.” Exhibit A, May 31, 2018, 2458:19-
4 2459:6).

5 **II. The Sales Comparisons Are Irrelevant And Misleading Because They Are**
6 **Based On Sales Data After Mrs. Tinlin Received Her Recovery Filter And Based On**
7 **Filters With Different Features Than The Recovery Filter.**

8 The chart that Plaintiff anticipates Bard will use is not relevant in this case because
9 the purported declining SNF sales represented on the chart occurred from 2005 through
10 2016, after Mrs. Tinlin received her Recovery filter on May 7, 2005. The retrievable filter
11 sales data when the SNF sales were purportedly declining were also based on filters that
12 were different in design from the Recovery filter—changes that Bard has repeatedly argued
13 were improvements.

14 This evidence and argument is also misleading and prejudicial because it suggests
15 that doctors views of the SNF in 2016 in comparison to the later Bard filters (such as the
16 Denali filter) somehow suggest that the Recovery filter in 2005 was better or more desirable
17 than the SNF, or relates somehow to what doctors knew about the Recovery filter in back
18 in 2005.

19 **III. Conclusion.**

20 This Court should preclude any evidence or argument that doctors preferred
21 retrievable filters based on sales data from 2005-2016 because the information lacks
22 relevance and is misleading.
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1 RESPECTFULLY SUBMITTED this 29th day of March, 2019.

2 BEUS GILBERT, PLLC.

3 By: /s/ Mark S. O'Connor

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CERTIFICATE OF SERVICE

I hereby certify that on this 29th day of March, 2019, I electronically transmitted the attached document to the Clerk's Office using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing.

/s/ Jessica Gallentine